No. 545.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1927

No. [redacted] 34

EQUITABLE TRUST COMPANY OF NEW YORK, AS TRUSTEE IN BANKRUPTCY OF KNAUTH, NACHOD & KUHNE, PETITIONER,

vs.

CARL ROCHLING ET AL., TRADING AS GEBRUEDER ROCHLING

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 25, 1928

CERTIORARI GRANTED APRIL 26, 1928

(31,792)

(31,792)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 322

EQUITABLE TRUST COMPANY OF NEW YORK, AS TRUSTEE IN BANKRUPTCY OF KNAUTH, NACHOD & KUHNE, PETITIONER,

vs.

CARL ROCHLING ET AL., TRADING AS GEBRUEDER ROCHLING

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 15, 1926

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[fol. 1]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

In Bankruptcy. No. 34996

In the Matter of Oscar L. Gubelman et al., Trading as Knauth, Nachod & Kuhne, etc., Bankrupts

In the Matter of the Reclamation Claim of Karl Röchling et al., Trading as Gebrueder Röchling

Petition for Appeal and Order Allowing Same

To the Honorable Judges of the United States District Court for the Southern District of New York:

The above named reclaimants, conceiving themselves aggrieved by the Order of this Court made and entered on May 27th, 1925, in the above entitled suit, do hereby appeal from said Order, for the reasons stated in their Assignment of Errors, to the United States Circuit Court of Appeals for the Second Circuit and they pray that this their appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said Order was made, duly authenticated, may be sent to the said United [fol. 2] States Circuit Court of Appeals for the Second Circuit; and in connection with this petition petitioners herewith present their said Assignment of Errors.

Dated June 3, 1925.

Kellogg, Emery, Inness-Brown & Cuthell, Attorneys for Reclaimants.

Office and P. O. address: 120 Broadway, Borough of Manhattan, City of New York.

And now, to wit, on the 5th day of June, 1925.

It is ordered that the above appeal be allowed as prayed for.

William Bondy, United States District Judge.

[fol. 3] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR

The above named reclaimant having appealed to the United States Circuit Court of Appeals for the Second Circuit from the order of this Court made and entered in the above entitled cause, filed in the Office of the Clerk of the Court on the 27th day of May, 1925, respectfully alleges and makes the following Assignment of Errors herein:

1. That the Court erred in entering the order appealed from dismissing the petition herein and said order is not supported by and is contrary to the facts as revealed by the pleadings herein and is against law and equity.

2. That the Court erred in holding that the writing on the checks herein was not restrictive in its effect preventing [fol. 4] the passage of title thereto to the firm of Knauth, Nachod & Kuhne.

3. That the Court erred in holding that because of the prior dealings of the reclaimants and Knauth, Nachod & Kuhne gave title to the latter in the checks dated June 15, 1923, from and after the time of delivery thereof.

4. That the Court erred in failing to hold that the amended petition herein entitled the reclaimants to reclaim against the estate of the above named bankrupts.

Dated New York, June 3, 1925.

Kellogg, Emery, Inness-Brown & Cuthell, Attorneys for Reclaimants.

Office & P. O. Address: 120 Broadway, New York City.

[fols. 5 & 6] Citation, in usual form, omitted in printing.

[fol. 7] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED PETITION

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

Your petitioners, Karl Röchling, Louis Röchling, Ernst Röchling, Eduard Röchling, Alexander Röchling, Heinrich Röchling, August Röchling, Albrecht Röchling, Max Röch-
[fol. 8] ling, Otto Röchling, Herman Röchling and Robert Röchling, trading as co-partners under the firm name and style of Gebrueder Röchling, hereinafter referred to as Gebrueder Röchling, by their attorney, Chester W. Cuthell, respectfully show:

1. That your petitioners, Karl Röchling, Louis Röchling, Ernst Röchling, Eduard Röchling, Alexander Röchling, Heinrich Röchling, August Röchling, Albrecht Röchling, Max Röchling, Otto Röchling, Herman Röchling and Robert Röchling, are co-partners trading under the firm name and style of Gebrueder Röchling, hereinafter referred to as Gebrueder Röchling.

2. That Oscar L. Gubelman, James F. Shaw, Rollin C. Newton, Herbert B. Smithers, John R. Hall, Mary W. Knauth and Theodore W. Knauth, hereinafter collectively referred to as Knauth, Nachod & Kuhne, against whom a petition for adjudication in bankruptcy has been filed, was, at and before the filing of said petition and still is justly and truly indebted to the said Gebrueder Röchling.

3. That on June 15, 1923, there were delivered to the said Knauth, Nachod & Kuhne two checks in the sum of $30,000 each by the National Bank of Commerce and the National City Bank of New York, respectively, which checks were to be collected by Knauth, Nathod & Kuhne through the New York Clearing House in accordance with the directions appearing on the face of said checks and the proceeds of which checks, after being thus collected, were to be
[fol. 9] deposited to the account of the Frankfort Branch of Gebrueder Röchling with the said Knauth, Nachod & Kuhne.

4. That no part of said debt has been paid; that there are no set-offs or counterclaims to the same and that said Gebrueder Röchling is entitled to priority in the payment of said $60,000 by reason of the facts hereinafter set forth.

National Bank of Commerce Check

5. That on or about May 17th and June 11th, 1923, Gebrueder Röchling sent letters to Lloyd's Bank, Ltd., Cox's Branch, London, which were duly received by the latter. True and accurate translations of said letters are hereto attached and marked Exhibits "A" and "B."

6. That pursuant to the terms of said letters of May 17th and June 11th, 1923, Gebrueder Röchling did undertake and agree to pay to Lloyd's Bank, Ltd., Cox's Branch, London, on June 15, 1923, the sum of £6485-12-11.

7. That in consideration of the undertaking and agreement of Gebrueder Röchling to pay said sum of £6485-12-11 the said Lloyd's Bank, Ltd., Cox's Branch, London, did undertake and agree to pay the sum of $30,000 on June 15, 1923, to the account of the said Gebrueder Röchling with Knauth, Nachod & Kuhne.

8. That in the fulfillment of this said undertaking and agreement the said Gebrueder Röchling did, on June 15, 1923, pay to said Lloyd's Bank, Ltd., Cox's Branch, [fol. 10] London, the sum of £6485-12-11, no part of which sum has at any time been regained by or paid over to the said Gebrueder Röchling.

9. That in the fulfillment of its said undertaking and agreement the said Lloyd's Bank Ltd., Cox's Branch, London, did prior to June 15, 1923, instruct the National Bank of Commerce in New York to deposit the sum of $30,000 to the account of Gebrueder Röchling, Frankfort Branch, with Knauth, Nachod & Kuhne, debiting the amount of said $30,000 to the account of the said Lloyd's Bank, Ltd., Cox's Branch, London, with the said National Bank of Commerce in New York.

10. That attached hereto and marked Exhibit "C" is a true and accurate copy of instructions forwarded by Lloyd's Bank, Ltd., Cox's Branch, London, to the National Bank

of Commerce, New York and received by the latter prior to June 15, 1923.

11. That the said National Bank of Commerce was not the agent of Gebrueder Röchling and was in this transaction to them unknown, and the said Gebrueder Röchling did not at the time said check hereinafter more particularly described was drawn have an account with the said National Bank of Commerce.

12. That on June 15, 1923, the said National Bank of Commerce did deliver its Cashier's check in the sum of $30,000 to Knauth, Nachod & Kuhne. A true and accurate photostatic copy of said check, front and back, is hereto attached and marked Exhibit "D."

[fol. 11] 13. That in delivering said check the National Bank of Commerce was acting pursuant to the instructions received by it from Lloyd's Bank, Ltd., Cox's Branch, London, as above set forth.

14. That said check provided:

"Pay to the order of Knauth, Nachod & Kuhne $30,000 for account of Röchling Bank, Gebt. Frankfort-on-Main, through the New York Clearing House."

15. That on June 15, 1923, Knauth, Nachod & Kuhne signed a receipt, a true and accurate photostatic copy of which is hereto attached and marked Exhibit "E", stating it had received from the National Bank of Commerce in New York Cashier's check for the above amount ($30,000) for account of Röchling Bank, Gebt. Frankfort-on-Main.

16. That by reason of the wording of said check said Knauth, Nachod & Kuhne well knew that it was bound to place the proceeds thereof in the account of Frankfort Branch of Gebrueder Röchling and that said Knauth, Nachod & Kuhne was not entitled to apply the proceeds to its own purposes.

17. After receiving the said check said Knauth, Nachod & Kuhne caused the same to be endorsed as follows:

"Pay to Guaranty Trust Company or order June 15, 1923.

Knauth, Nachod & Kuhne, New York, N. Y."

[fol. 12] 18. That during business hours on June 15, 1923, the said check endorsed as above set forth, was delivered by Knauth, Nachod & Kuhne to Guaranty Trust Company, where Knauth, Nachod & Kuhne maintained a general checking account and the amount of $30,000 being the amount of said check was credited by Guaranty Trust Company to the said account of Knauth, Nachod & Kuhne on that same day.

19. That as appears from further endorsements on the back of said check, payment was received by said Guaranty Trust Company of New York through the New York Clearing House on June 16, 1923.

20. That about ten o'clock P. M. on June 15, 1923 a petition in bankruptcy against the above named bankrupts was presented to Judge John C. Knox together with a petition for the appointment of a receiver; that annexed to said petition for the appointment of a receiver was a written consent executed on behalf of the said bankrupts; that an order appointing a receiver was signed by Judge Knox that evening as hereinafter set forth and that on the following morning, June 16, 1923 at 9:30 o'clock the aforesaid petition in bankruptcy, petition for the appointment of a receiver and order appointing a receiver were filed in the office of the Clerk of the United States District Court for the Southern District of New York.

21. Upon information and belief that Middleton S. Borland, Esq., was duly appointed receiver and pursuant to the order of his appointment took possession of the prop-[fol. 13] erty of said Knauth, Nachod & Kuhne at the opening of business on the morning of June 16, 1923, and after orders were entered adjudicating all of the above named bankrupts, the said Middleton S. Borland was elected to act and continues to act as trustee for the said estate of the above named bankrupts.

22. That at the time when said Knauth, Nachod & Kuhne received the said check on June 15, 1923 Knauth, Nachod & Kuhne well knew itself to be insolvent.

23. That the payment made through the New York Clearing House as above set forth was made after the petition

in bankruptcy had been filed in the office of the Clerk of the United States Court for the Southern District of New York on the morning of June 16, 1923.

24. Upon information and belief that at the close of business on June 15, 1923 the account of Knauth, Nachod & Kuhne with the said Guaranty Trust Company was as follows:

(a) After duly crediting to the general checking account of Knauth, Nachod & Kuhne the said check for $30,000, there remained cash to the credit of Knauth, Nachod & Kuhne in said account in the amount of $22,369.90;

(b) A debt upwards of $301,551.97 due Guaranty Trust Company by Knauth, Nachod & Kuhne on a loan.

25. Thereafter and during the month of July, 1923 the accounts of Guaranty Trust Company with Knauth, Nachod & Kuhne were settled in the following manner:

[fol. 14] (a) Collateral pledged by Knauth, Nachod & Kuhne in the amount of $302,716.42 was sold in payment of the debt, interest, stamps, commissions, etc. due by the said Knauth, Nachod & Kuhne to the Guaranty Trust Company.

(b) The Guaranty Trust Company thereupon paid to the receiver the $22,369.90 above referred to, plus an additional $1,164.65, the latter being an adjustment of cash secured from the sale of securities above mentioned, and the Guaranty Trust Company thereupon returned to Middleton S. Borland, as receiver, the securities listed in Exhibit "F" hereto annexed.

26. That by reason of the foregoing said Gebrueder Röchling is entitled to receive the cash and securities listed in Exhibit "F" or so much thereof or the proceeds of so many thereof as should be equivalent to the sum of $30,000, together with interest from the 15th day of June, 1923 to date.

The National City Bank of New York Check

27. That on or about May 15th and June 11th, 1923, Gebrueder Röchling sent letters to Swiss Bank Corporation, London, which were duly received by the latter. True

and accurate translations of said letters are hereto attached and marked Exhibits "G" and "H."

28. That pursuant to the terms of said letters of May 15th and June 11th, 1923 Gebrueder Röchling did undertake and agree to pay to Swiss Bank Corporation, London, on June 15th, the sum of £6483-19-3.

[fol. 15] 29. That in consideration of the undertaking and agreement of Gebrueder Röchling to pay said sum of £6483-19-3 the said Swiss Bank Corporation, London, did undertake and agree to pay the sum of $30,000 on June 15, 1923, to the account of the said Gebrueder Röchling with Knauth, Nachod & Kuhne.

30. That in the fulfillment of this said undertaking and agreement the said Gebrueder Röchling did, on June 15, 1923, pay to said Swiss Bank Corporation, London, the sum of £6483-19-3, no part of which sum has at any time been regained by or paid over to the said Gebrueder Röchling.

31. That in the fulfillment of its said undertaking and agreement the said Swiss Bank Corporation, London, did, prior to June 15th, 1923, instruct the National City Bank of New York to deposit the sum of $30,000 to the account of Gebrueder Röchling, Frankfort Branch with Knauth, Nachod & Kuhne, debiting the amount of said $30,000 to the account of the said Swiss Bank Corporation, London, with the said National City Bank of New York.

32. That the said National City Bank of New York was not the agent of Gebrueder Röchling and was in this transaction to them unknown, and the said Gebrueder Röchling did not at the time said check hereinafter more particularly described was drawn have an account with the said National City Bank of New York.

33. That on June 15, 1923, the said National City Bank of New York did deliver its Cashier's check in the sum of [fol. 16] $30,000 to Knauth, Nachod & Kuhne. A true and accurate photostatic copy of said check, front and back, is hereto attached and marked Exhibit "I."

34. That in delivering said check the National City Bank of New York was acting pursuant to the instructions re-

ceived by it from Swiss Bank Corporation, London, as above set forth.

35. That said check provided:

"Pay to the order of Knauth, Nachod & Kuhne A/C Gebr. Röcheling, Frankfort a/m. Thirty Thousand ($30,000) Dollars, payable only through New York Clearing House."

36. That on June 15, 1923, Knauth, Nachod & Kuhne signed a receipt, a true and accurate photostatic copy of which is hereto attached and marked Exhibit "J."

37. That by reason of the wording of said check said Knauth, Nachod & Kuhne well knew that it was bound to place the proceeds thereof in the account of Frankfort Branch of Gebrueder Röchling and that said Knauth, Nachod & Kuhne was not entitled to apply the proceeds to its own purposes.

38. After receiving the said check said Knauth, Nachod & Kuhne caused the same to be endorsed as follows:

"Pay to American Exchange National Bank or order, June 15, 1923.

Knauth, Nachod & Kuhne, New York, N. Y."

[fol. 17] 39. That during business hours on June 15, 1923, the said check so endorsed was delivered by Knauth, Nachod & Kuhne to American Exchange National Bank where Knauth, Nachod & Kuhne maintained a general checking account and the amount of $30,000, being the amount of said check was credited by American Exchange National Bank to the said account of Knauth, Nachod & Kuhne on that same day.

40. That as appears from further endorsements on the back of said check, payment was received by said American Exchange National Bank through the New York Clearing House on June 16, 1923.

41. That about ten o'clock P. M. on June 15, 1923, a petition in bankruptcy against the above named bankrupts was presented to Judge John C. Knox together with a

petition for the appointment of a receiver; that annexed to said petition for the appointment of a receiver was a written consent executed on behalf of the said bankrupts; that an order appointing a receiver was signed by Judge Knox that evening as hereinafter set forth and that on the following morning, June 16, 1923, at 9:30 o'clock the aforesaid petition in bankruptcy, petition for the appointment of a receiver and order appointing a receiver were filed in the office of the Clerk of the United States District Court for the Southern District of New York.

42. Upon information and belief that Middleton S. Borland, Esq., was duly appointed receiver and pursuant to the order of his appointment took possession of the prop- [fol. 18] erty of said Knauth, Nachod & Kuhne at the opening of business on the morning of June 16, 1923, and after orders were entered adjudicating all of the above named bankrupts, the said Middleton S. Borland was elected to act and continues to act as trustee for the said estate of the above named bankrupts.

43. That at the time when said Knauth, Nachod & Kuhne received the said check on June 15, 1923, Knauth, Nachod & Kuhne well knew itself to be insolvent.

44. That the payment made through the New York Clearing House as above set forth was made after the petition in bankruptcy had been filed in the office of the Clerk of the United States Court for the Southern District of New York on the morning of June 16, 1923.

45. Upon information and belief that at the close of business on June 15, 1923, the account of Knauth, Nachod & Kuhne with the said American Exchange National Bank was as follows:

(a) After duly crediting to the general checking account of Knauth, Nachod & Kuhne the said check for $30,000, there remained cash to the credit of Knauth, Nachod & Kuhne in the said account in the amount of $212,128.56.

(b) A debt upwards of $251,580.89 due American Exchange National Bank by Knauth, Nachod & Kuhne on a loan.

46. Thereafter and during the month of July, 1923, the accounts of American Exchange National Bank with [fol. 19] Knauth, Nachod & Kuhne were settled in the following manner:

(a) American Exchange National Bank applied cash on deposit amounting to $212,128.56, sold securities as collateral for the loan amounting to $20,600.50 and received from Middleton S. Borland, as receiver, check for $18,851.83.

(b) The American Exchange National Bank thereupon turned over to Middleton S. Borland, as receiver, the securities listed in Exhibit "K" hereto annexed.

47. That by reason of the foregoing said Gebrueder Röchling is entitled to receive the cash and securities listed in Exhibit "K" or so much thereof or the proceeds of so many thereof as should be equivalent to the sum of $30,000, together with interest from the 15th day of June 1923, to date.

48. That the petition herein made against the persons above named is without prejudice to any rights against William C. Peyton, Anne du Pont Peyton, George W. Perkins, Evelina V. Perkins, Edward W. Freeman and Dorothy W. Freeman, which petitioners have or may have, and petitioners specifically reserve all such rights in conformity with the provisions of the order made herein by the Honorable John C. Knox, United States District Judge under date of January 9, 1924, all as more particularly set out in said order, to which reference is made and which is to be read as a part hereof.

[fol. 20] 49. That the petition herein made against the persons above named is without prejudice to any rights against National Bank of Commerce in New York, Guaranty Trust Company of New York, National City Bank of New York, American Exchange National Bank of New York or any of them, which petitioners have or may have in connection with the checks hereinbefore described or any transactions connected with said checks or any of them.

Wherefore your petitioners pray that the Court enter an order decreeing that the petitioners are entitled to a lien

upon the moneys or securities in the hands of the trustee, more particularly described in Exhibits "F" and "K" hereof in the amount of $60,000, together with interest from the 15th day of June, 1923 superior to any and all rights of the bankrupts or the trustee or any other creditor herein, and that the trustee be decreed to pay the said sum with interest to the petitioners out of the moneys and property in his hands.

Dated New York, February 6th, 1925.

Kellogg, Emery, Inness-Brown & Cuthell, Attorneys for Petitioners.

Office & P. O. Address: 120 Broadway, New York City.

[fol. 21] *Duly sworn to by Chester W. Cuthell. Jurat omitted in printing.*

[fol. 22] EXHIBIT "A" TO AMENDED PETITION

Gebt. Röchling,
Foreign Bill of
Exchange Dept.

Frankfort on Main
May 14, 1923.

Lloyds Bank Ltd. (Cox's Branch)
London.

We take over from you
as agreed: direct

M11652	$30,000.	New York,	15/6	46256

for which we credit you in dollar term-account.
The countervalue of:

£6,485. 12. 11. 15 6

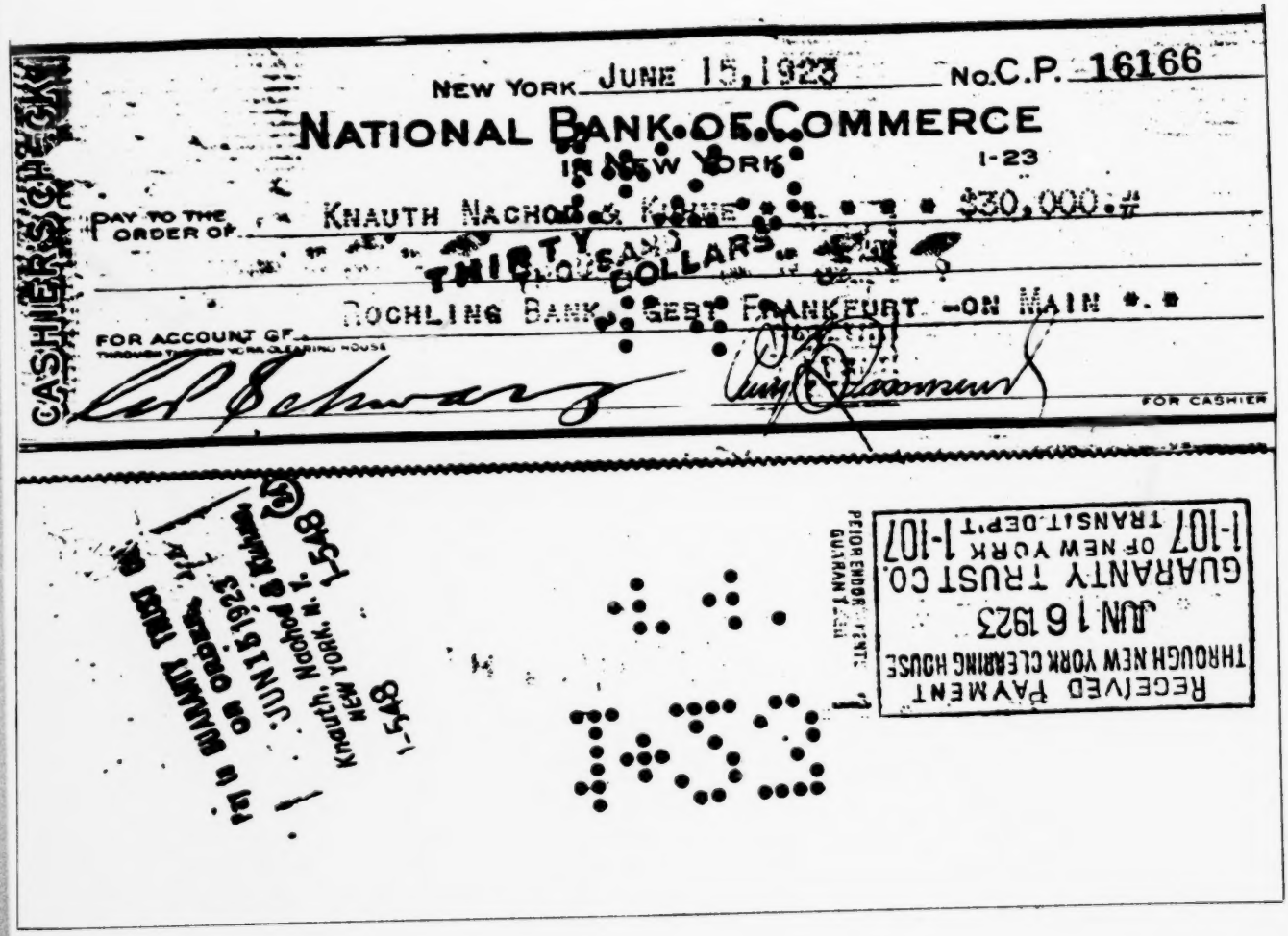
we are meanwhile debiting to your pound term-account.
46256

Yours truly, Gebr. Röchling. (Sgd.) —— ——.

B of E.
2193

EXHIBIT "D"

[fols. 25 + 26]



CASHIER'S CHECK

NEW YORK JUNE 15, 1923 No. C.P. 16166

NATIONAL BANK OF COMMERCE
IN NEW YORK
1-23

PAY TO THE ORDER OF KNAUTH NACHOD & KÜHNE $30,000.#

THIRTY THOUSAND DOLLARS

ROCHLING BANK, GEBT FRANKFURT -ON MAIN

FOR ACCOUNT OF

FOR CASHIER

RECEIVED PAYMENT
THROUGH NEW YORK CLEARING HOUSE
JUN 16 1923
GUARANTY TRUST CO.
OF NEW YORK
1-107 TRANSIT DEPT 1-107

PRIOR ENDORSEMENTS GUARANTEED

PAID BY GUARANTY TRUST CO.
ON ORDER OF
JUN 16 1923
KNAUTH, NACHOD & KÜHNE
NEW YORK, N. Y.
1-548

[fol. 23] EXHIBIT "B" TO AMENDED PETITION

Gebr. Röchling
Foreign Bill of
Exchange Dept.
Lloyds Bank Ltd. Cox's Branch,
London.

Frankfort-on-Main,
June 11, 1923

On the basis of our agreement of May 14, you have to deliver to us:

No. 11652 $30,000.— New York at 46256
per June 15, 1923

We request you to procure this amount for us at:

Knauth, Nachod & Kuhne, New York,

for which we will credit you, upon receipt, in Dollar term-account.

For the countervalue of

£6485. 12. 11. L'don. Value June 15, 1923

we debit your pound term-account, and you will kindly debit us in L. s. d pound account.

Yours very truly, pp. Gebr. Röchling. (Sgd.)
—— ——.

[fol. 24] EXHIBIT "C" TO AMENDED PETITION

"Pay 30,000 value fifteenth to Knauth, Nachod and Kuhne New York for account of Rochling Bank, Gebt. Frankfort-on-Main."

(Here follows Exhibit "D," side folio pages 25 and 26)

[fol. 27] EXHIBIT "E" TO AMENDED PETITION

No. C. P. 216,166

New York, June 15, 1923.

Knauth, Nachod & Kuhne. * * * $30,000.# Received from National Bank of Commerce in New York Cash-

ier's Check for the Above Amount for account of Rochling Bank, Gebt Frankfort-on-Main. * * *

Copy

in accordance with instructions dated 6-11-23.

Received from London, England, Lloyd's Bank Ltd. (Cox's Branch.)

(Sign here:) —— ——.

[fol. 28] EXHIBIT "F" TO AMENDED PETITION

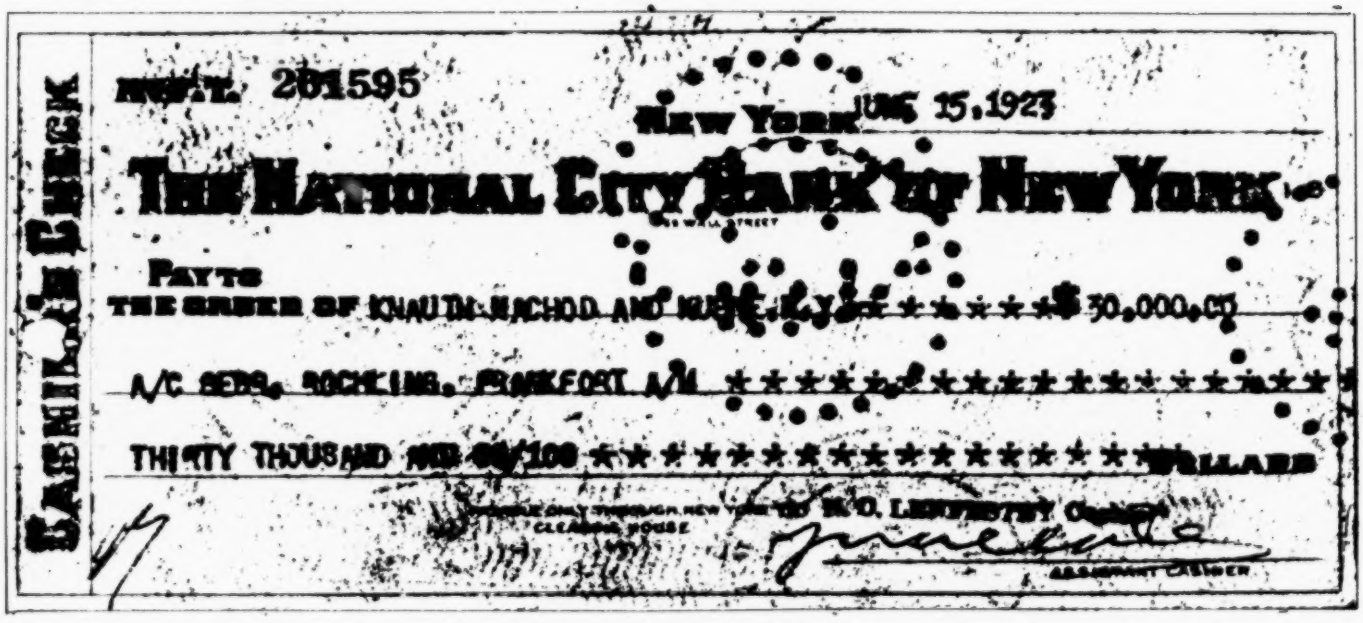
Cash and Securities Returned by Guaranty Trust Company To Receiver of Knauth, Nachod & Kuhne on or After June 16th, 1923

Surplus from sale of securities pledged by Knauth, Nachod & Kuhne with Guaranty Trust Company covering a loan of $301,551.77, said securities being sold for $302,716.42 leaving as said balance	$1,164.65
Cash balance in Knauth, Nachod & Kuhne's checking account	22,369.90
Securities owned by Knauth, Nachod & Kuhne and returned by Guaranty Trust Company:	
800 shares Consolidated Cigar Company—value about	18,000.00
Securities in which margin customers of Knauth, Nachod & Kuhne have an interest, returned by Guaranty Trust Company:	
100 DuPont de Nemours Debentures,	
100 Market Street Railway prior preferred stock.	
100 shares New Orleans, Texas & Mexico,	
100 shares United States Steel Company preferred,	
200 shares Utah Copper Company.	
100 shares Standard Oil Company of New Jersey, preferred.	

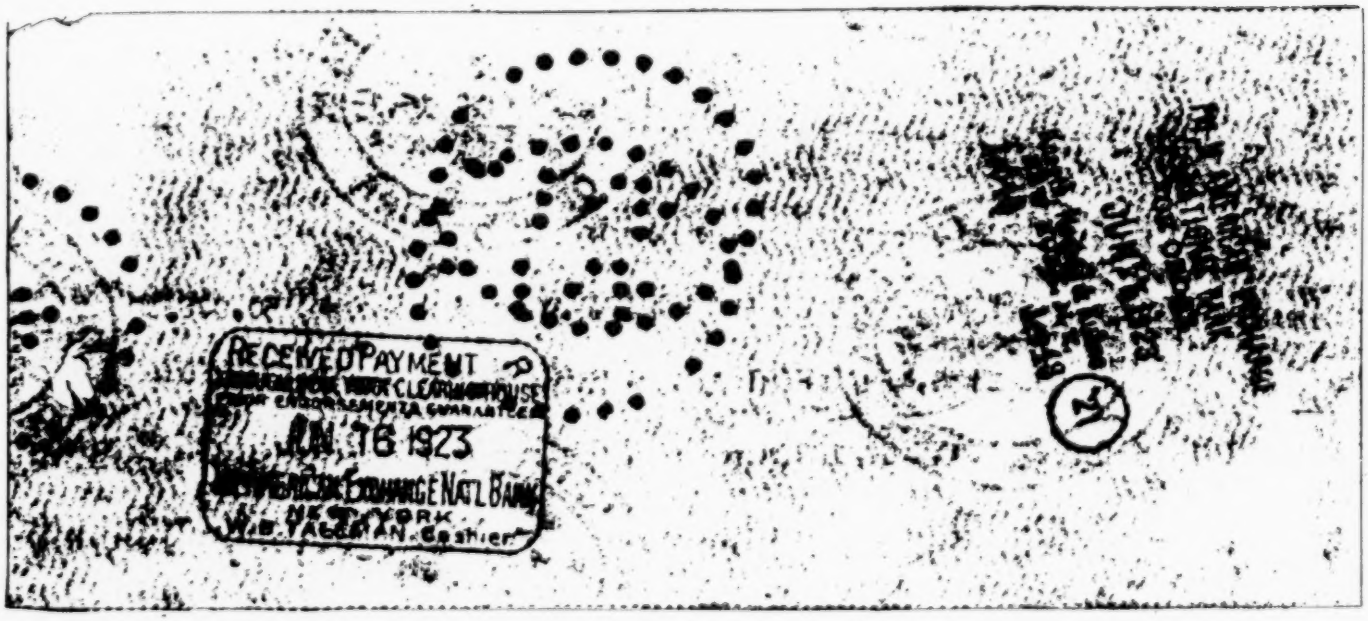
[folo. 31+32]

EXHIBIT "I"

Front of Check.


CASHIER'S CHECK
No. T. 261595
NEW YORK JUNE 15, 1923
THE NATIONAL CITY BANK OF NEW YORK
PAY TO
THE ORDER OF KNAUTH NACHOD AND KUHNE, N.Y. $30,000.00
A/C SEBS. ROCHLING. FRANKFORT A/M
THIRTY THOUSAND AND 00/100 DOLLARS
PAYABLE ONLY THROUGH NEW YORK CLEARING HOUSE
ASSISTANT CASHIER

Back of Check.



[fol. 29] EXHIBIT "G" TO AMENDED PETITION

Ger. Eng. 12/26/24.

Gebr. Rochling, Bank, Mainzerlandstr. 23

Frankfort on Main, May 15, 1923.

Swiss Bank Corporation, London:

(Foreign Bill of Exchange Dept.)

We take over from you as agreed: direct: M.11695 $30,000—New York, Value: June 15, at: 46268, for which we debit you on Dollar term-account.

The countervalue of £6,483-19-3, Value June 15, we are crediting to your £ term-account.

Yours very truly, p. p. Gebr. Rochling. (Signed) —— ——.

22,325.— 44650. 2318.

[fol. 30] EXHIBIT "H" TO AMENDED PETITION

Gebr. Röchling, Bank

Frankfort on Main, June 11, 1923.

Swiss Bank Corporation, London.

(Foreign Bill of Exchange Dept.)

On the basis of our agreement of May 15th, you have to deliver to us No. 11695. $30,000—New York, at 46268 per June 15, 1923.

We request you to procure this amount for us at Knauth, Nachod & Kuhne, New York, for which we will credit you, upon receipt, in Dollar term-account.

For the countervalue of £6483-19-33, L'don, Value June 15, 1923, we debit your Pound term-account, and are crediting you with the pound amount through Lloyds Bank, Cox's Branch, London.

Yours very truly, pp. Gebr. Röchling. (Sgd.) —— ——.

(Here follows Exhibit I, side folio pages 31 and 32.)

[fol. 33] EXHIBIT "J" TO AMENDED PETITION

Duplicate Receipt

June 15, 1923.

Received from the National City Bank of New York by Knauth, Nachod and Kuhne, N. Y. $30,000.00 A/C Gebr. Rochling, Frankfort A/M Thirty Thousand and 00/100 Dollars.

(Signature:) H. L.

Received Payment Jun. 15, 1923. Knauth, Nachod & Kuhne, New York.

[fol. 34] EXHIBIT "K" TO AMENDED PETITION

Securities Belonging, in Whole or in Part, to Knauth, Nachod & Kuhne and Returned to the Receiver of Knauth, Nachod & Kuhne by the American Exchange National Bank of New York.

100	Underwood Typewriter.
500	Mexican Seaboard V. T. certificates.
410	Fajardo Sugar.
50	" "
50	United States Steel common.
$10,000	Chicago, Milwaukee & St. Paul 4½, 2014.
5,000	Chesapeake & Ohio 5/46.
40,000	Erie Convertible 4/53.
16,000	Rio de Janeiro 8/47.
10,000	" " " 8/46.
8,000	St. Louis & San Francisco Income 6/60.
200	American Cotton Oil Preferred.
550	Central Aguirre Sugar.
100	Hudson Motors.
100	Manhattan Ry. Guaranteed.
200	National Cloak & Suit Common.
200	Northern Pacific.
1,200	Ray Consolidated Copper.
100	Reading.
500	Southern Pacific.
400	Tennessee Copper & Chemical.
1,500	Transcontinental Oil.

[fol. 35] UNITED STATES DISTRICT COURT

[Title omitted]

Answer to Amended Petition

Middleton S. Borland, the Trustee herein, answering the petition of Gebr. Röchling, respectfully alleges as follows:

I. That he has no knowledge or information sufficient to form a belief with respect to each and every allegation set forth in paragraphs "6," "7," "9," "13," "16," "22," and "26," of the petition, and therefore denies the same.

II. That he has no knowledge or information sufficient to form a belief with respect to each and every allegation set forth in paragraph "3" of the petition, and therefore denies the same, except that he admits on June 15, 1923, there were delivered to Knauth, Nachod & Kuhne two checks, in the sum of $30,000 each, by the National Bank of Commerce and the National City Bank of New York, respectively.

[fol. 36] III. That he has no knowledge or information sufficient to form a belief with respect to each and every allegation set forth in paragraph "4" of the petition, and therefore denies the same, except that he admits that no part of the debt of the bankrupts to the petitioner, arising out of the transactions with reference to said two $30,000 checks, has been paid to the said petitioner and that there are no set-offs or counterclaims to the claims asserted by the petitioner herein.

IV. That he has no knowledge or information sufficient to form a belief with respect to each and every allegation set forth in paragraph "8" of the petition, and therefore denies the same, except that he admits that petitioner did on June 15, 1923, pay to Lloyd's Bank, Ltd., Cox's Branch, London, the sum of £6485-12-11, no part of which sum has at any time been regained by, or paid over to, petitioner.

V. That he has no knowledge or information sufficient to form a belief with respect to each and every allegation set forth in paragraph "11," of the petition, and therefore denies the same, except that he admits that petitioner did

not, at the time of the drawing of the check referred to in paragraph "11" of the petition, have an account with the National Bank of Commerce.

VI. That he has no knowledge or information sufficient to form a belief with respect to each and every allegation set forth in paragraphs "28," "29," "31," "34," "37," "43" and "47," of the petition, and therefore denies the same.

[fol. 37] VII. That he has no knowledge or information sufficient to form a belief with respect to each and every allegation set forth in paragraph "30" of the petition, and therefore denies the same, except that he admits that petitioner did on June 15, 1923, pay to Swiss Bank Corporation, London, the sum of £6483-19-3, no part of which sum has at any time been regained by, or paid over to, petitioner.

VIII. That he has no knowledge or information sufficient to form a belief with respect to each and every allegation set forth in paragraph "32" of the petition, and therefore denies the same, except that he admits that the petitioner did not, at the time of the drawing of the check referred to in paragraph "32" of the petition, have an account with the National City Bank of New York.

Wherefore, the Trustee prays for an order dismissing the petition herein with costs and disbursements.

Rosenberg & Ball, Attorneys for Trustee.

Office & P. O. Address: 74 Broadway, Borough of Manhattan, City of New York.

[fol. 38] *Duly sworn to by George G. Ernst. Jurat omitted in printing.*

[fol. 39] In United States District Court

[Title omitted]

Stipulation of Facts

For the purpose of any trial of the reclamation claim of Gebruder Röchling (hereinafter referred to as the claimant) the following facts are stipulated to be true, and this

stipulation shall be available for use by the claimant and Trustee subject to the provisions hereinafter contained:

I. On June 15, 1923, the day of the receipt by Knauth, Nachod & Kuhne from the National Bank of Commerce of the check for $30,000, referred to in paragraph "3" of the reclamation petition of the claimant, Knauth, Nachod & Kuhne credited to the account of the claimant on the books of Knauth, Nachod & Kuhne, the sum of $30,000, the amount of said check, and also made an entry on its books [fol. 40] that said claimant was entitled to interest on said sum of $30,000 from June 15, 1923. Thereafter the receiver and/or trustee of said Knauth, Nachod & Kuhne, in preparing a statement of the account of the claimant with Knauth, Nachod & Kuhne, as of the close of business on June 15, 1923, did include in said account interest for one day, to wit: interest on said sum of $30,000 for the day of June 15, 1923.

II. On June 15, 1923, the day of the receipt by Knauth, Nachod & Kuhne from the National City Bank of New York, of the check for $30,000, referred to in paragraph "3" of the reclamation petition of the claimant, Knauth, Nachod & Kuhne credited to the account of the claimant on the books of Knauth, Nachod & Kuhne, the sum of $30,000, the amount of said check, and also made an entry on its books that said claimant was entitled to interest on said sum of $30,000 from June 15, 1923. Thereafter the receiver and/or trustee of said Knauth, Nachod & Kuhne, in preparing a statement of the account of the claimant with Knauth, Nachod & Kuhne, as of the close of business on June 15, 1923, did include in said account interest for one day, to wit: interest on said sum of $30,000 for the day of June 15, 1923.

III. That Knauth, Nachod & Kuhne frequently from time to time in the regular course of their business with claimant, extending over a period of two years, received checks from New York banking institutions under circumstances substantially the same as those set forth in claimant's peti- [fol. 41] tion, and that in all such cases the practice above outlined with respect to the crediting and the allowance of interest on the $30,000 checks received from the National Bank of Commerce and the National City Bank of New York, respectively, was followed; that in all such cases and

in the transactions involving the aforementioned $30,000 checks, claimant had knowledge of the dates on which checks were instructed to be delivered to Knauth, Nachod & Kuhne in New York, and subsequently were notified of the dates of actual delivery.

IV. That Knauth, Nachod & Kuhne periodically sent to claimant statements of the latter's account with Knauth, Nachod & Kuhne, which statements set forth among other things sums credited to the account of claimant, the date of each credit, and a credit or credits for accrued interest computed upon sums credited from the dates of the credits aforementioned.

V. That on June 15, 1923, a check #11649 in the amount of $30,000 was received from Speyer & Co. by Knauth, Nachod & Kuhne for the account of claimant, and was credited by Knauth, Nachod & Kuhne to the account of claimant in the same manner as was employed in connection with the aforementioned checks received from the National Bank of Commerce and the National City Bank of New York.

VI. That on June 16, 1923, after the appointment and qualification of Middleton S. Borland as receiver of Knauth, Nachod & Kuhne, payment on said check was stopped, pursuant to instructions given by Speyer & Co.

[fol. 42] VII. That after the stoppage of payment on said check received from Speyer & Co. the credit to the account of claimant for the amount thereof appearing on the books of Knauth, Nachod & Kuhne, was reversed and the said sum of $30,000 was subtracted from the balance appearing on said books of Knauth, Nachod & Kuhne in favor of claimant.

VIII. All objections to the admissions in evidence of any fact or facts hereinabove stipulated are waived except objections on the ground of irrelevancy and/or immateriality.

IX. Nothing herein contained shall be deemed to limit the right of either party hereto to offer such other and further testimony and proof herein as said party may be advised, the sole purpose of this stipulation being to avoid

the necessity of producing common-law evidence to prove the truth of the facts herein stipulated to be true.

Dated New York, February 19, 1925.

Rosenberg & Ball, Attorneys for Trustee. Kellogg, Emery, Inness-Brown & Cuthell, Attorneys for Claimant.

[fol. 43] IN UNITED STATES DISTRICT COURT

In the Matter of KNAUTH, NACHOD & KUHNE, Bankrupt

Before Robert P. Stephenson, Esq., Special Master

MINUTES OF HEARINGS BEFORE SPECIAL MASTER

Hearing on Reclamation of Gebruder Röchling, Nov. 11, 1924, at 2 p. m.

Appearances of counsel omitted in printing.

Hearing adjourned sine die.

[fol. 44] [Title omitted]

Hearing on reclamation of Gebruder Röchling proceeded pursuant to adjournment, March 4, 1925, at 2 p. m.

Appearances of counsel omitted in printing.

Mr. Ernst: It is stipulated that the form of receipt referred to in paragraph 15 of the petition herein and annexed to the petition as Exhibit E thereof was submitted [fol. 45] to the bankrupts by the National Bank of Commerce, together with the check in the receipt referred to and under cover of instrument herewith offered in evidence as Claimant's Exhibit A.

(Received in evidence and marked Claimant's Exhibit A, March 4, 1925.)

Mr. Ernst: For the purposes of the record, the following facts are stipulated to be true:

"On June 15, 1923, the day of the receipt by Knauth, Nachod & Kuhne from the National Bank of Commerce of the check for $30,000, referred to in paragraph "3" of the

reclamation petition of the claimant, Knauth, Nachod & Kuhne credited to the account of the claimant on the books of Knauth, Nachod & Kuhne, the sum of $30,000, the amount of said check, and also made an entry on its books that said claimant was entitled to interest on said sum of $30,000 from June 15, 1923. Thereafter the receiver and/or trustee of said Knauth, Nachod & Kuhne, in preparing a statement of the account of the claimant with Knauth, Nachod & Kuhne, as of the close of business on June 15, 1923, did include in said account interest for one day, to wit: interest on said sum of $30,000 for the day of June 15, 1923.

On June 15, 1923, the day of the receipt by Knauth, Nachod & Kuhne from the National City Bank of New York, of the check for $30,000, referred to in paragraph "3" of the reclamation petition of the claimant, Knauth, Nachod [fol. 46] & Kuhne, credited to the account of the claimant on the books of Knauth, Nachod & Kuhne, the sum of $30,000, the amount of said check, and also made an entry on its books that said claimant was entitled to interest on said sum of $30,000 from June 15, 1923. Thereafter the receiver and/or trustee of said Knauth, Nachod & Kuhne, in preparing a statement of the account of the claimant with Knauth, Nachod & Kuhne, as of the close of business on June 15, 1923, did include in said account interest for one day, to wit: interest on said sum of $30,000 for the day of June 15, 1923.

That Knauth, Nachod & Kuhne frequently and from time to time in the regular course of their business with claimant, extending over a period of two years, received checks from New York banking institutions under circumstances substantially the same as those set forth in claimant's petition, and that in all such cases the practice above outlined with respect to the crediting and the allowance of interest on the $30,000 checks received from the National Bank of Commerce and the National City Bank of New York, respectively, was followed; that in all such cases and in the transactions involving the aforementioned $30,000 checks, claimant had knowledge of the dates on which checks were instructed to be delivered to Knauth, Nachod & Kuhne in New York, and subsequently were notified of the dates of actual delivery.

That Knauth, Nachod & Kuhne periodically sent to claim-
[fol. 47] ant statements of the latter's account with Knauth, Nachod & Kuhne, which statements set forth among other things sums credited to the account of claimant, the date of each credit, and a credit or credits for accrued interest computed upon sums credited from the dates of the credits aforementioned.

That on June 15, 1923, a check 11649 in the amount of $30,000 was received from Speyer & Co. by Knauth, Nachod & Kuhne for the account of claimant, and was credited by Knauth, Nachod & Kuhne to the account of claimant in the same manner as was employed in connection with the aforementioned checks received from the National Bank of Commerce and the National City Bank of New York.

That on June 16, 1923, after the appointment and qualification of Middleton S. Borland as receiver of Knauth, Nachod & Kuhne, payment on said check was stopped, pursuant to instructions given by Speyer & Co.

That after the stoppage of payment on said check received from Speyer & Co. the credit to the amount of claimant for the amount thereof appearing on the books of Knauth, Nachod & Kuhne, was reversed and the said sum of $30,009 was subtracted from the balance appearing on said books of Knauth, Nachod & Kuhne in favor of claimant."

Mr. Ernst: I move to strike out everything offered in evidence by the claimant herein as to transactions between the claimant and Lloyd's Bank, England, as between Lloyd's Bank, England, and the National Bank of Commerce and as
[fol. 48] to transactions between the claimant herein and the Swiss Banking Corp. and between the Swiss Bank Corp. and the National City Bank of New York, on the ground that none of such evidence is binding on the bankrupts herein. There is no proof of knowledge on their part as to what those transactions were and they are not chargeable with that information; therefore the testimony is irrelevant and immaterial.

The Master: What do you say to that?

Mr. Hotchkiss: I would say this—that it is in evidence, in one case certainly, that it was brought home to Knauth, Nachod & Kuhne that the transactions involved Lloyd's

Bank, England, and I think it is inferable from the evidence that is in, in the National City Bank case, that some other bank, name unknown, was involved. That being so, while I do not believe and do not argue that the anterior transactions in any way bind Knauth, Nachod & Kuhne, I think it is proper that they should be brought in to explain the fact that if Knauth, Nachod & Kuhne were put on notice or should have been put on notice, the fact or facts would have developed; that is, had they been bound to inquire further. I submit that if, as I argue, they were put on notice here, I think it is proper and necessary for me to show what they would have found if they had pursued the inquiry which I submit should have been made.

(Then followed oral argument.)

The Master: I will deny the motion.
Mr. Ernst: I take an exception.

Hearing closed. Decision reserved.
Briefs to be submitted.

[fol. 49] In United States District Court

[Title omitted.]

Opinion of the Special Master—May 12, 1925

Petition of Gebrueder Röchling for an order decreeing that the petitioners are entitled to a lien upon the money or securities in the hands of the Trustee in the amount of $60,000 with interest from June 15, 1923, and that the Trustee [fol. 50] be decreed to pay said sum with interest to the petitioners.

Kellogg, Emery, Inness-Brown & Cuthell, Esqs., for the petitioners.
Rosenberg & Ball, Esqs., for the trustee.

Stephenson, Special Master:

The petitioner is a co-partnership of Frankfort-on-Main, Germany. On May 4, 1923, the petitioner arranged with Lloyd's Bank, Ltd., London, for $30,000 to be delivered in

New York on June 15, 1923. On May 15, 1923, the petitioner arranged with Swiss Bank Corporation, London, for another $30,000 to be delivered in New York on June 15, 1923.

National Bank of Commerce in New York Check

On June 11, 1923, the petitioner instructed Lloyd's Bank Ltd., London, on the basis of the agreement of May 14, 1923, to deliver to them $30,000 in New York, and to procure that amount for them at Knauth, Nachod & Kuhne, New York. Prior to June 15, 1923, Lloyd's Bank Ltd. instructed the National Bank of Commerce in New York as follows:

"Pay 30,000 value fifteenth to Knauth, Nachod & Kuhne, New York for account of Rochling Bank, Gebt. Frankfort-on-Main."

On June 15, 1923, the National Bank of Commerce in New York delivered to Knauth, Nachod & Kuhne its cashier's check for $30,000, which read:

[fol. 51] "Pay to the order of Knauth, Nachod & Kuhne —$30,000. For account of Rochling Bank, Gebt. Frankfort-on-Main. Through The New York Clearing House."

The check was indorsed by Knauth, Nachod & Kuhne as follows:

"Pay to Guaranty Trust Co. or order. Jun. 15, 1923. Knauth, Nachod & Kuhne, New York, N. Y."

and on that day delivered to the Guaranty Trust Company, where Knauth, Nachod & Kuhne maintained a general checking account, and the amount of $30,000, being the amount of said check, was on that day credited by the Guaranty Trust Company to said account of Knauth, Nachod & Kuhne, and was collected by the Guaranty Trust Company through the New York Clearing House, after the petition in bankruptcy was filed against Knauth, Nachod & Kuhne, and after the Receiver was appointed. Upon receipt of this check by Knauth, Nachod & Kuhne on June 15, 1923, they gave a receipt to the National Bank of Commerce in New York for a cashier's check for $30,000 "for

account of Rochling Bank, Gebt. Frankfurt-On-Main, in accordance with instructions dated 6-11-23, received from London, England, Lloyd's Bank, Ltd. (Cox's Branch)." On June 15, 1923, Knauth, Nachod & Kuhne credited the account of the petitioner on their books with the sum of $30,000, and also entered on their books that the petitioner was entitled to interest on said $30,000 from June 15, 1923.

[fol. 52] National City Bank Check

On June 11, 1923, the petitioner requested Swiss Bank Corporation, London, to deliver to them $30,000. in New York on June 15, 1923, and to procure that amount for them at Knauth, Nachod & Kuhne, New York. On June 15, 1923, the National City Bank of New York delivered to Knauth, Nachod & Kuhne its cashier's check for $30,000, which read as follows:

"Pay to the Order of Knauth, Nachod & Kuhne, N. Y. $30,000 A/C Gebr. Rochling, Frankfort A/M. Payable only through New York Clearing House."

And Knauth, Nachod & Kuhne on that day gave the National City Bank a receipt in which they stated they had "Received from the National City Bank of New York $30,000. A/C Gebr. Rochling, Frankfort A/M." What, if any, instructions were given by the Swiss Bank Corporation to the National City Bank has not been shown. Knauth, Nachod & Kuhne indorsed the check received from the National City Bank of New York as follows:

"Pay to American Exchange National Bank or order. Jun. 15, 1923. Knauth, Nachod & Kuhne, New York, N. Y."

and on June 15, 1923, delivered this check to the American Exchange National Bank in which bank Knauth, Nachod & Kuhne maintained a general checking account, and the [fol. 53] amount of $30,000, being the amount of the said check, was on that day credited by the American Exchange National Bank to said account of Knauth, Nachod & Kuhne. This check was collected by the American Exchange National Bank through the New York Clearing House on June 16, 1923, after the petition in bankruptcy had been filed, and a Receiver of Knauth, Nachod & Kuhne had been ap-

pointed. On June 15, 1923, Knauth, Nachod & Kuhne credited the account of the petitioner on their books with said sum of $30,000, and also entered on their books that the petitioner was entitled to interest on said $30,000 from June 15, 1923.

Facts Applicable to Both Checks

In settling his accounts and liquidating the loans of Knauth, Nachod & Kuhne with the Guaranty Trust Company and the American Exchange National Bank, the Receiver received the benefit of both the above checks, and and there has come into his possession either cash or securities from each of said banks sufficient to cover each of the $30,000 checks.

In the regular course of business extending over a period of two years, between the petitioner and Knauth, Nachod & Kuhne, frequently and from time to time, Knuth, Nachod & Kuhne have received checks from New York banking institutions under circumstances substantially the same as the circumstances surrounding the receipt of the above checks. In all such cases the petitioner was credited with the amount of such checks on the day of their receipt, and was also [fol. 54] allowed interest on such amounts from the date of their respective receipts by Knauth, Nachod & Kuhne. The petitioner had knowledge of the dates on which checks were instructed to be delivered to Knauth, Nachod & Kuhne, and was subsequently notified of the dates of actual delivery. Knauth, Nachod & Kuhne periodically sent to petitioner statements of these amounts, which statements set forth the sums credited to the account of the claimant, the date of each such credit, and the credits for accrued interest computed upon the sums credited as aforesaid.

On June 15, 1923, Knauth, Nachod & Kuhne received a check for $30,000 from Speyer & Company for the account of the petitioner, and the petitioner's account was credited in the same manner. On June 16, 1923, after the appointment of a Receiver, payment was stopped on the Speyer & Company check, and thereafter the Receiver reversed such credit of $30,000 in favor of the petitioner and subtracted the same from the balance appearing on the books of Knauth, Nachod & Kuhne in favor of the petitioner.

The petitioner had no specific arrangement with Knauth, Nachod & Kuhne regarding the receipt by it of the particular checks involved in this reclamation proceeding. In determining the rights of the petitioner, it is immaterial what instructions Lloyd's Bank, Ltd. or the Swiss Banking Corporation gave to the banks in New York. What those instructions were, Knauth, Nachod & Kuhne did not know, and even if it did know what those instructions were, they [fol. 55] were not the instructions of the petitioner, but of London banks who stood in the relation to the petitioner of independent contractors.

The New York banks did not deliver to Knauth, Nachod & Kuhne either money or money immediately available, since the checks were payable through the New York Clearing House and the money would not be available until the day following. Therefore, by these checks the New York banks promised to pay Knauth, Nachod & Kuhne or order, the amounts therein specified on the day after their delivery. Knauth, Nachod & Kuhne were not agents to collect these checks, as the New York banks could not appoint them agents to collect from themselves. Neither did Knauth, Nachod & Kuhne receive these checks as their own property, and agree to pay the petitioner the amounts thereof. There was no contract between Knauth, Nachod & Kuhne and the New York banks for the benefit of a third person. As far as any dealings between Knauth, Nachod & Kuhne and the New York Banks are concerned, the checks and even the proceeds thereof when collected were to be held by Knauth, Nachod & Kuhne in trust for or as bailees for the petitioner. There was nothing in the arrangement between Knauth, Nachod & Kuhne and the New York banks which would authorize Knauth, Nachod & Kuhne to keep these checks, or even the funds when collected, as their own. If the New York banks, instead of delivering their checks had delivered gold bullion to Knauth, Nachod & Kuhne for account of the petitioner, such gold bullion would remain the property of the petitioner. Such was the holding in White v. The Miners National Bank, 102 U. S. 658. There the Miners National Bank delivered to [fol. 56] White a draft drawn on a third party which was endorsed as follows:

"Pay to S. W. White or order for account Miners National Bank, Georgetown, Colorado."

Concerning this endorsement, the Court states:

"It does not purport to transfer the title of the paper or the ownership of the money when received. Both these remain by the reasonable and almost necessary meaning of the language, in the indorser."

The Court then states that the effect of the indorsement was to make White the agent of the bank for the collection of the money. The first statement regarding the title of the paper or the ownership of the money when received applies to this case, but the second statement as to making White the agent of the bank for collection does not apply to this case. The New York banks did not make Knauth, Nachod & Kuhne agents to collect from themselves. The facts in this case are different from the White case, for in the White case, the draft was on a third party; in this case, the checks were the bank's own checks.

But the course of dealing between Knauth, Nachod & Kuhne and the petitioner shows that there was an agreement between them that Knauth, Nachod & Kuhne could at some time become the owner either of gold bullion or of checks delivered to them by New York banks, and immediately become a debtor to the petitioner for the amounts thereof. This course of dealing shows that the petitioner and Knauth, Nachod & Kuhne agreed that as soon as Knauth, Nachod & Kuhne received checks of New York [fol. 57] banks, they became the owners of the same, were entitled to sell them, and use the proceeds of such sale, and the petitioner was entitled to a credit for the amount of such checks, and to interest on the amount of such checks from the date of receipt by Knauth, Nachod & Kuhne. In this case, in accordance with that understanding, Knauth, Nachod & Kuhne did sell these checks to their banks on June 15, 1923, and received immediate credit therefor (Burton v. U. S., 196 U. S. 283). The fact that the petitioner had, for a period of two years, to its knowledge, accepted interest on such checks from the date of their receipt by Knauth, Nachod & Kuhne, and that Knauth, Nachod & Kuhne had, from such date, paid interest on said checks, and had the immediate use of the same, proves an intention

by the parties that Knauth, Nachod & Kuhne have the immediate ownership of such checks.

"If a man pays interest for money, he must be entitled to the use of it. When a man locks up money which is intrusted to him, in a box, he does not pay interest on it" (Cotton, L. J., in re Brood (1884), L. R., 13 Q. B. D. 740).

This case is not like the case of re Jarmulowsky, 249 Fed. 319, or National B. & D. Bank v. Hubbell, 117 N. Y. 384. In the Jarmulowsky case, depositors in a bank endorsed their checks in blank, and received immediate credit, but their pass books contained the notice that deposits of checks shall not be drawn against until collected. Evidence that a depositor had been permitted to draw against uncollected checks did not prove that he had a right so to draw. This was merely a privilege, and it could have been [fol. 58] retracted at any time. In this case, no such special agreement between Knauth, Nachod & Kuhne and the petitioner is shown, and therefore Burton v. United States, supra, applies. In National B. & D. Bank v. Hubbell, supra, checks were sent to Wilkinson & Company for collection, but were immediately credited to the depositor on the books of Wilkinson & Company before collection, and Wilkinson & Company remitted to the depositor each week the amount standing to its credit, whether or not the checks had been collected. This manner of doing business had been carried on for a number of years, and was the existing arrangement, but such course of business did not make Wilkinson & Company the owners of checks which were expressly sent for collection. In the case at bar, there was no arrangement between Knauth, Nachod & Kuhne and the petitioner that checks received by them were for collection and without such evidence and with the evidence of the course of business as above indicated, it follows that the contract between Knauth, Nachod & Kuhne and the petitioner was that Knauth, Nachod & Kuhne became the immediate owner of checks delivered to it by New York banks, and that the petitioner became an immediate creditor and entitled to interest. Furthermore, the petitioner specifically intended to have its credit with Knauth, Nachod & Kuhne increased by the amounts of these checks on June

15, 1923. Their instructions to the London banks were to procure these amounts of dollars for them at Knauth, Nachod & Kuhne, New York. This direction, connected with the fact that the petitioner carried an account to its credit with Knauth, Nachod & Kuhne, shows that the petitioner intended Knauth, Nachod & Kuhne to have title to the deposit made June 15, 1923, and that the petitioner have [fol. 59] credit for the same on that date. Therefore, in getting the credit on June 15, 1923, the petitioner got exactly what it intended to get.

My conclusion in this case accords with the reasoning applied by the courts to cases where paper is given a bank by a depositor for collection. This paper remains the property of the depositor; so would the money when collected, being the proceeds of the property of the depositor, remain the depositor's property. But from the course of dealing between the depositor and banker, the Courts find an agreement that when the money is collected, the bank takes title to the money and becomes a debtor to the depositor. Thus, in Commercial Bank v. Armstrong, 148 U. S. 50, the Court states as follows:

"The truth undoubtedly is that both parties understood that when the money was collected, plaintiff was to have credit with the defendant for the amount of the collection, and that the defendant would use the money in its business. Thus, the defendant was guilty of no wrong in using the money, because it had become its own."

In other words, the time when the bank becomes the owner and the depositor a creditor is the time that the parties understand that such change in their relationship shall occur. In paper given to a bank expressly for collection, it is understood the bank is not the owner of the paper, but the parties could agree that as to all paper delivered to a bank, it should become the immediate owner. The facts in this reclamation proceeding show that this is just what the parties intended.

For the above reasons, the petition herein should be dismissed.

Dated, May 12, 1925.

[fol. 60] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPEALED FROM

This matter having duly come on to be heard on May 22, 1925, upon motion of Rosenberg & Ball, attorneys for the Trustee herein, for an order confirming report No. 45 of the Special Master herein, now, upon reading and filing said report of the Special Master and the papers referred to therein and thereto annexed, and upon all of the proceedings had herein, it is, after due consideration, on motion of Rosenberg & Ball, attorneys for the Trustee herein,

Ordered that the said report of the Special Master be and the same hereby is in all respects confirmed, and the reclamation claim of Geber. Rochling be and the same hereby is dismissed; and it is

[fol. 61] Further ordered that the Trustee be and he hereby is authorized and directed to pay Robert P. Stephenson, as Compensation for his services as Special Master herein, $250.00, and that the Trustee recover from claimant herein, as costs and disbursements, the said $250.00, together with stenographer's fees of $5.40, and in addition thereto a docket fee of $20, amounting in all to $275.40, and have judgment and execution therefor; and it is

Further ordered that, for the purpose of effecting collection of said costs and disbursements, the Trustee be, and he hereby is, authorized to offset said amount against any dividend or dividends which may be declared herein in favor of said claimant.

Dated New York, May 27, 1925.

Augustus N. Hand, U. S. D. J.

[fol. 62] IN UNITED STATES DISTRICT COURT

OPINION OF JUDGE A. N. HAND GRANTING ORDER IN BANKRUPTCY

"I think the master is right. The only alternative is to hold that the relation of debtor and creditor would not arise until after the cashier's checks were collected but this is not

in accordance with the prior dealings of the parties and the customary allowance of interest from the date of the credit allowed. While the case is not free from doubt the petitioner in my opinion obtained a credit with Knauth, Nachod & Kuhne when the latter obtained the checks and allowed the credit. At that time the Bankrupts by the course of business became the owners of the checks and the customer the creditor of the bankrupts. See memorandum in Reclamation of Latzko & Popper, Inc. This Estate, February 17, 1925.

A. N. H., D. J.

[fol. 63] IN UNITED STATES DISTRICT COURT

STIPULATION RE APPEAL BOND

It is stipulated that no appeal bond shall be required.

Dated June 10, 1925.

Kellogg, Emery, Inness-Brown & Cuthell, Solicitors for Reclaimant. Office and P. O. Address: 120 Broadway, New York City. Rosenberg & Ball, Solicitors for Middleton S. Borland, Trustee in Bankruptcy, 74 Broadway, New York City.

[fol. 64] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the United States District Court in the above entitled matter as agreed upon by the parties.

Dated New York, June 3, 1925.

Kellogg, Emery, Inness-Brown & Cuthell, Attorneys for Reclaimant. Rosenberg & Ball, Esqrs., Attorneys for Middleton S. Borland, Trustee in Bankruptcy.

[fol. 65] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 66] In United States Circuit Court of Appeals for the Second Circuit

In re Oscar L. Gubelman et al., Bankrupts

Ex Parte: Karl Röchling et al., Appellants; Middleton S. Borland, Trustee, Appellee

Before Hough, Manton and Hand, Circuit Judges

Opinion

Appeal from an order in bankruptcy of the District Court for the Southern District of New York dismissing the petition of the firm, Gebrueder Röchling, to reclaim the proceeds of two cheques which came into the possession of the trustee in bankruptcy.

Henry G. Hotchkiss for the appellants.
George G. Ernst for the Appellee.

Hand, Circuit Judge:

This case presents exactly the same situation, with a single exception to be noted, as existed in respect of the second cheque in In Re Gubelman, Ex parte Latzko & Popper, decided by this court on December seventh, 1925. There the cheque read, "Pay to the order of Knauth, Nachod & Kuhne, Favor of N. Latzko & Popper." Here one cheque read, "for account of Röchling Bank" and the other "a/c Gebt. Röchling." We held that "Favor of" was equivalent to "collect for," and it seems to us even plainer that "for account of" is as broad. Indeed this was the form of the cheque in White v. National Bank, 102 U. S. 658. If the drawer chooses to make the payee a fiduciary he establishes that relation when the payee accepts it, at least until the beneficiary repudiates it, or unless his ar- [fol. 67] rangements with the payee forbid. There can be no question that the drawer has limited the payee's free disposal of the cheque in the interest of another, and that is enough.

However, as we have just said, there is one difference between the case at bar and Ex parte Latzko & Popper. There the proof was that although the depositors' cheques were always at once credited to their account, their practise had been never to draw upon them until collection. Here the cheques were also credited at once, but it does not appear what the practise was as to drawing against them. As there was no agreement shown in either case to wait or not to wait until collection we regard any distinction as immaterial. In addition, not only were the items themselves at once credited, but interest upon them as well from the time of their receipt. This too we think immaterial. The immediate credit of such paper is itself evidence of the creation of a debt from the bank to its depositor, and on its face presupposes a purchase of the cheque. But such an entry will not control the form of the paper. We do not see that it adds anything of substance that interest has also been credited. Such entries are not kept in suspense or entered "short," but are reversed, if the item be dishonored. The trustee must indeed go so far, and does, as to say that if these cheques had been stopped, the claimants could notwithstanding have insisted upon drawing down their amount, because they were not endorsers. Yet this could not have been done if their face had been merely credited to the account. It appears to us that to make the added credit of interest so important is to deal in unrealities. When an account bears interest it is as natural to begin to credit interest at once as to credit the item at all. Any distinction seems to us gratuitious.

The cases do not help very much. In Beal v. Somerville, 50 Fed. Rep. 647, (C. C. A. 1), no interest was credited, nor [fols. 68 & 68a] was there an agreement that the depositor might draw at once. In First National Bank v. Armstrong, 40 Fed. Rep. 46, interest was indeed credited, but the credit was entered "subject to payment." National Butchers Bank v. Hubbel, 117 N. Y. 384, is closer, because although the bank did not credit interest, it remitted weekly, regardless of collections, relying upon its ability to reverse the entries, if any item were dishonored. That seems a stronger case for the assignee than this at bar is for the trustee.

In general we are disposed to make the form of the paper the test. We do not of course mean that an express agreement will not change what would otherwise be a trust into a debt. But it seems to us unreasonable to build up agreements, almost certainly factitious, upon the basis of the bank's bookkeeping, even when this on its face contradicts the legal results ascribed to the transactions. There must be better evidence of an agreement to change the intent otherwise imputed.

Order reversed; cause remanded with instruction to award the claimants a preferred claim on both cheques.

[fol. 69] In United States Circuit Court of Appeals

[Title omitted]

Appeal from the District Court of the United States for the Southern District of New York

Judgment—Filed February 9, 1926

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed with costs and cause remanded with instructions to enter an order in accordance with the opinion of this court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

C. M. H., L. H.

[fol. 70] [File endorsement omitted.]

[fol. 71] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 72] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 26, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1980)